REMARKS

The present amendment is submitted in this case in which, following withdrawal of the notice of abandonment and following the filing of a Request for Continued Examination, the Examiner has cited two references which were not previously relied upon against claims of a scope comparable to the scope of the claims always in the case.

One of these references, BARTLEY et al 4,952,134 is directed to a blow molding method, the initial step of which is to produce by injection molding a parison which the Examiner has apparently considered equivalent to the injection molded tube of the invention, notwithstanding the fact that the tube of the invention is not blow molded and the molding of the bottom portion takes place on the injection molded product whereas the shaping with a heated stamp in the reference takes place subsequent to blow molding.

To move the claim subject matter further from the reference, although applicant does not believe that the reference is appropriate at all, claim 1 has been amended to make clear that the bottom is only partially closed so that even upon the rounding the bottom end will remain open as FIG. 1 makes clear.

It should be apparent that if claims 1 and 5, the only claims in the case, were properly rejected on a combination of BARTLEY et al with NIELSEN in the first place, that rejection is

not applicable at all in view of the present amendment to the claims.

Below applicant presents his view with respect to the rejection even without this amendment to claim 1. But before developing that argument, it is important to note that the Examiner appears to completely ignore the requirement in claims 1 and 5 that integral with the wall and between the ends of the wall a conical intermediate bottom is formed which has an apex turned toward the rounded end of the tube and forms a well within the tube itself.

If one looks at FIG. 3 of the BARTLEY et al reference carefully, one can see that there is no conical intermediate bottom formed in that tube. Indeed, as a comparison of FIG. 3 with any of FIGS. 6 - 8 of BARTLEY et al will show, any structure within the bottle or even externally thereof is formed after blow molding. An injection molded structure with a conical intermediate bottom forming a well is simply not disclosed in BARTLEY et al. Since it is not disclosed in NIELSEN either, the references in combination do not teach or suggest a method of making a sample tube which will be both self orienting as claim 1 requires and will enable the removal of a biological sample in the well formed by the conical intermediate bottom by a pipe head. On this ground as well, the rejection on a combination of BARTLEY et al with NIELSEN cannot stand.

Applicant has the following analysis of the Examiner's application of BARTLEY and NIELSEN against claims 1 and 5 prior to the present amendment.

"It is first to note that the BARTLEY reference discloses neither the production of sample tubes nor the fabrication of sample tubes by an injection molding rather, BARTLEY concerns the production of beverage bottles by blow molding utilizing blow molding machines. A two part blow mold 40 receives a parison for the blowing thereof and the parison is subjected to blowing by air into its final shape which is the shape of a bottle. The cavity of the blow mold 40 thus imparts the final form to the product.

BARTLEY, therefore, is directed to a completely different fabrication process which is intended to attack special problems which arise in the blow molding field and in which the injection molding of sample tubes play no role whatsoever and would not attract the attention of the artisan in the field of injection molding of sample tubes. The injection molding artisan would not look to the BARTLEY reference at all to resolve the problems discussed in the background portion of the application.

For example, in BARTLEY, a sample tube with an intermediate bottom forming a well as presently claimed is not even suggested and at no point is there a suggestion that such an intermediate bottom may be provided. Furthermore, because the bottle of BARTLEY must have a closed bottom, there is no way that the ordinary skilled worker in the art could deduce from BARTLEY the formation of a rounded bottom which remains open as the present claims require.

The reference is directed, in the teachings with respect to the parison that a closed rounded bottom be provided with a projecting ledge or annular collar.

The bottom end of the bottle retains this basic configuration. Accordingly, the reference cannot be considered to teach either the rounding of the bottom end of the sample tube outside an injection mold in which a tube is formed by pressing a heated stamp there against to cause the bottom end of a sample tube to be spaced to a concavity of a concave recess or, for that matter, the step of pressing edges of the end inwardly as claim 1 requires.

The reference, therefore, does not suggest the method recited in claim 1 except for the type heading of a sample from the well for which the NIELSEN reference has been used. NIELSEN does not teach modification of BARTLEY so that edges at an end will be pressed inwardly and that the bottom of a sample tube would be rounded to form an orienting end tube which remains open as claimed.

Accordingly, the combination of references, if proper, would not meet the claims."

Finally, applicants must point out the, while the combination of references may be proper, the fact that the combination does not even hint at the formation by injection molding of the conical well between the ends of the wall is sufficient to overcome the rejection based on that combination.

Claims 1 and 5 thus ought to be considered to be allowable and an early notice to that effect is earnestly solicited.

Respectfully submitted,
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